

Message

From: Tomiak, Robert [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=E43D67FE354A4D06BE80AFA6EB65E614-TOMIAK, ROB]
Sent: 4/20/2017 5:21:44 PM
To: Eisenberg, Mindy [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cfb4c26bb6f44c7db69f9884628b3ef9-Eisenberg, Mindy]; Goodin, John [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=3eac342f280a4b9db4079c81f66d1913-JGoodin]; Peck, Gregory [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=633d0632187140118ea1387b7a8169b0-GPeck]; Knight, Kelly [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=47fc4b0c90f94826a1d9a48381f4009f-Knight, Kel]; Marshall, Tom [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5d29134e5e32489b9ab0aeb262f55075-TMARSHAL]
Subject: Rosemont Mine

FYI, Rob

From: Tomiak, Robert
Sent: Thursday, April 20, 2017 1:15 PM
To: Johnson, Kathleen <Johnson.Kathleen@epa.gov>
Subject: RE: R9 weekly report

Kathleen,

I have a few thoughts and suggestions to offer. First and foremost, I appreciate the recognition that this needs to be a tri-party decision to elevate to the Administrator. My concern (and reaction) was the issue paper going to the political team without yet having that higher level buy in from all; specifically noting that many of the concerns and [REDACTED] are seemingly tied to a USACE permit decision which hasn't yet happened. [REDACTED]

I have spoken with Ted; [REDACTED] **Deliberative Process / Ex. 5**
[REDACTED] While he is disappointed with the timing and nature of the USFS letter, we think the clock started. I have asked Ted to seek a federal position (meaning getting USFS buy in) on what date triggers the clock, the date of the letter or the date you all received it. I think it is reasonable to ask all parties to use the latter; Ted was inclined to agree and will return an answer to us; concurrent to thinking through other options that may be available to all of us. Using the date received would at least shift our decision date from next Friday to May 5th; giving us all more time to staff/vet this.

These are a few of our concerns that I'd appreciate your thoughts on:

- The majority of our hard issues are related to the 404 permit process. Given that the permit action/decision has not occurred, and that a reasonable premise is that our issues would have to be resolved via that process for a permit to be issued, we seem to be implying two points: we don't trust the USCAE to make the right decision on the 404 permit and we are prepared to veto their decision (and does OW agree?).
- We express concerns related to habitat and endangered species. Hasn't a BO already been issued with a non-jeopardy decision and imposed additional mitigation? If so, we seem to be making a similar statement about our lack of trust in F&WS to adequately perform their role.
- The State seems to not share our concerns on water quality impacts; I'm not clear on our points (really want to see all the correspondence on this topic) but it seems that the State disagreed and provided their views in the form of a reclama, which we have not yet responded to. In any event, your draft letter is not clear on the water quality impacts and what our expectations of USFS are.
- We conclude with what appears to be a message that we do not believe there is any way in which the project can proceed. We seem to have rejected all ideas by USFS and the applicant to date to restructure alternatives and identify mitigation. Is there any scenario in which some version (revised scope) of this project could

alleviate/mitigate the impacts that we consider critical?

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

I'll absolutely help you and your team navigate our way through this. Mindy (OW) and I are trying to connect with USCAE colleagues to get a read from them on their inclinations.....will share what we find out as additional data points for consideration.

We're trying to convert the Tuesday 1 pm (est) VTC into a meeting of the Acting AAs and RA. I just don't think we have more time to delay that group of three sharing their thoughts on the best way to approach this.

You shared your issue paper with Ken; what feedback have you received (if any) since then? Has he elevated this topic within the political team to your knowledge?

Separately, I want to talk with you about Kathy's involvement yesterday with CEQ's NEPA meeting.

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

More to follow.

Thanks, Rob

From: Johnson, Kathleen

Sent: Wednesday, April 19, 2017 9:02 PM

To: Tomiak, Robert <tomiak.robert@epa.gov>

Cc: Moutoux, Nicole <Moutoux.Nicole@epa.gov>; Knight, Kelly <knight.kelly@epa.gov>; Marshall, Tom <marshall.tom@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Goforth, Kathleen <Goforth.Kathleen@epa.gov>

Subject: RE: R9 weekly report

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

We have been informed by the Forest Service that they will not issue a Mine Plan of Operation unless the proponent has all of its necessary permits. If this is the case, then these two decisions would automatically align. It would be helpful to get clarification from the Forest Service that this is indeed their intent.

Lastly, throughout the number of months that we have been involved in this project, there has been very little that has changed in terms of the scope of the project, its potential environmental impact or mitigation proposed.

Deliberative Process / Ex. 5

Kathleen H. Johnson
Director, Enforcement Division
U.S. EPA - Region 9
75 Hawthorne Street ENF-1
San Francisco, CA 94015
415/972-3873
johnson.kathleen@epa.gov

From: Tomiak, Robert
Sent: Wednesday, April 19, 2017 3:30 PM
To: Johnson, Kathleen <Johnson.Kathleen@epa.gov>
Cc: Moutoux, Nicole <Moutoux.Nicole@epa.gov>; Knight, Kelly <knight.kelly@epa.gov>; Marshall, Tom <marshall.tom@epa.gov>; Brush, Jason <Brush.Jason@epa.gov>; Eisenberg, Mindy <Eisenberg.Mindy@epa.gov>; Goodin, John <Goodin.John@epa.gov>
Subject: Re: R9 weekly report

If referral, we need a draft letter by COB tomorrow to start staffing/vetting here.

Rob

On Apr 19, 2017, at 6:13 PM, Tomiak, Robert <tomiak.robert@epa.gov> wrote:

Including Mindy and John from OW. If you are leaning toward referral, we can't wait until next week. I suggest a coordination call with us and OW soonest to lay out your thoughts and options.

Thanks, Rob

On Apr 19, 2017, at 5:38 PM, Johnson, Kathleen <Johnson.Kathleen@epa.gov> wrote:

Jason reports that the groundwater technical meeting yesterday was a rehash of existing information. Nothing new was presented. We will be updating our RA on

Friday. We will try to set up a briefing for you on this early next week and would be happy to have anyone from OW also participate.

Kathleen H. Johnson
Director, Enforcement Division
U.S. EPA - Region 9
75 Hawthorne Street ENF-1
San Francisco, CA 94015
415/972-3873
johnson.kathleen@epa.gov

From: Tomiak, Robert
Sent: Wednesday, April 19, 2017 6:51 AM
To: Johnson, Kathleen <Johnson.Kathleen@epa.gov>
Cc: Moutoux, Nicole <Moutoux.Nicole@epa.gov>; Knight, Kelly <knight.kelly@epa.gov>; Marshall, Tom <marshall.tom@epa.gov>
Subject: RE: R9 weekly report

Kathleen,

We need an update please. I have conferred with our OW counterparts, and can share that outcome as well. Let's set up a coordination call/brief for this afternoon, or tomorrow morning your time.

Thanks, Rob

From: Johnson, Kathleen
Sent: Monday, April 17, 2017 1:05 PM
To: Strauss, Alexis <Strauss.Alexis@epa.gov>; Tomiak, Robert <tomiak.robert@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Cozad, David <Cozad.David@epa.gov>; Moutoux, Nicole <Moutoux.Nicole@epa.gov>
Subject: RE: R9 weekly report

Deliberative Process / Ex. 5

Kathleen H. Johnson
Director, Enforcement Division
U.S. EPA - Region 9
75 Hawthorne Street ENF-1
San Francisco, CA 94015
415/972-3873
johnson.kathleen@epa.gov

From: Strauss, Alexis
Sent: Monday, April 17, 2017 9:56 AM
To: Tomiak, Robert <tomiak.robert@epa.gov>; Johnson, Kathleen <Johnson.Kathleen@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Cozad, David

<Cozad.David@epa.gov>

Subject: RE: R9 weekly report

I suggest involving the Water programs (Tomas Torres, Jason Brush) after this week's Rosemont meeting, when new info is available. I don't need to be part of that update.

Alexis Strauss
Acting Regional Administrator
E.P.A. Region 9
75 Hawthorne Street
San Francisco, CA 94105
415-972-3572

From: Tomiak, Robert
Sent: Monday, April 17, 2017 9:52 AM
To: Strauss, Alexis <Strauss.Alexis@epa.gov>; Johnson, Kathleen <Johnson.Kathleen@epa.gov>
Cc: Starfield, Lawrence <Starfield.Lawrence@epa.gov>; Cozad, David <Cozad.David@epa.gov>
Subject: RE: R9 weekly report

Alexis/Kathleen,

Thanks for sharing the update. I think your staff did a great job of cuing up the issues;

Deliberative Process / Ex. 5

Deliberative Process / Ex. 5

With a final

biological opinion from USFWS and the expectation that the USACE will issue a 404 permit, perhaps the focus should instead be on what we believe it would take to alleviate our remaining significant concerns, such as specific mitigative measures that we want to see incorporated.

Larry and I think it would be helpful for a quick coordination call on this. What is your availability today?

Thanks, Rob

From: Strauss, Alexis
Sent: Monday, April 17, 2017 12:06 PM
To: Johnson, Kathleen <Johnson.Kathleen@epa.gov>; Tomiak, Robert <tomiak.robert@epa.gov>; Starfield, Lawrence <Starfield.Lawrence@epa.gov>
Subject: R9 weekly report

From: Strauss, Alexis
Sent: Thursday, April 13, 2017 5:08 PM
To: Weekly Report Group <Weekly_Report_Group@epa.gov>
Cc: Nishida, Jane <Nishida.Jane@epa.gov>; Shapiro, Mike <Shapiro.Mike@epa.gov>; Breen, Barry <Breen.Barry@epa.gov>; Dunham, Sarah <Dunham.Sarah@epa.gov>
Subject: R9 weekly report

HOT ISSUES

Unrelated/Unresponsive

2. ROSEMONT (AZ) COPPER MINE: (FYI) next Tuesday, April 18 in Phoenix, EPA will join the US Forest Service and the Corps of Engineers to discuss water quality and other issues related to the proposed Rosemont copper mine, which we have reviewed under NEPA and CWA. The Forest Service will issue its Record of Decision in May, the Corps its CWA 404 decision some time thereafter. CEQ has been coordinating the multi-agency engagement. I attach a one-page briefing paper and will update Ken W, OW and OECA when EPA decision time nears.

Unrelated/Unresponsive

Unrelated/Unresponsive

Kind regards,
Alexis

Alexis Strauss
Acting Regional Administrator
E.P.A. Region 9
75 Hawthorne Street
San Francisco, CA 94105
415-972-3572
